



Am. S.B. 266*
124th General Assembly
(As Reported by S. Education)

Sen. Robert Gardner

BILL SUMMARY

- Changes the name of the State Board of Proprietary School Registration to the State Board of Career Colleges and Schools.
- Directs the Board to specify the period of time for which a career school must maintain a surety bond.
- Allows the Board to establish the amount of the surety bond maintained by a career school in Ohio beginning July 1, 2003.
- Authorizes the Board to permit the cancellation of a career school's surety bond if the school is approved to participate in certain federal student financial assistance programs or satisfies other standards of financial responsibility established by the Board.
- Specifies that private career school students are eligible for reimbursement of prepaid tuition losses only in the event of school closure.
- Requires reimbursements for prepaid tuition losses generally to be paid by the surety on a career school's bond rather than from the Student Tuition Recovery Fund beginning July 1, 2003.
- Eliminates the requirement that the Board conduct an on-site visit of a career school proposing to offer an associate degree program prior to the Board issuing or renewing authorization for such program.

* *This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Abolishes the requirement that the Ohio Board of Regents recommend whether to approve applications for the issuance or renewal of program authorizations for associate degree programs at career schools.
- Eliminates the requirement that agents for career schools be covered by a surety bond.
- Adds an additional voting member with a background in career school administration or management to the Board and makes the representative of students on the Board a nonvoting member.
- Provides a fixed rate of compensation for all Board members appointed by the Governor.
- Exempts from regulation by the Board employee training courses that are paid for by employers and conducted by outside service providers.
- Effective July 1, 2003, creates the Career Colleges and Schools Operating Fund to support the Board's administrative and enforcement responsibilities.
- Makes legislative members of the Student Tuition Recovery Authority nonvoting ex officio members.
- Makes other changes to the oversight of career schools.
- Permits students enrolled in eligible institutions prior to July 1, 2000, to receive student workforce development grants.

CONTENT AND OPERATION

Background

Chapter 3332. of the Revised Code governs proprietary schools, also known as private career schools. Under current law, any course, school, or college that is not specifically exempt from the provisions of Chapter 3332. of the Revised Code is regulated by the State Board of Proprietary School Registration. State colleges and universities as well as nonprofit private educational institutions governed by the Ohio Board of Regents (such as Otterbein College and Wittenberg University) are among the schools exempted from Chapter 3332. Certain schools designed to prepare students for specified licensed professions (such as barber and cosmetology schools) are regulated by the state boards that

license the participants in those professions. Most for-profit institutions designed to prepare students for a career are *not* exempt.

In its role as overseer, the State Board of Proprietary School Registration monitors various aspects of the operations of career schools, including admissions and recruitment practices, faculty qualifications, and long-term financial viability. Among its primary responsibilities is the issuance of certificates of registration to any nonexempt career school that maintains a program in Ohio. In addition, the Board issues individual program authorizations for each type of diploma offered by a career school. The State Board of Proprietary School Registration and the Board of Regents work together to approve program authorizations for career schools that seek to offer associate, baccalaureate, master's, or doctoral degree programs.

Career schools, unlike public and private nonprofit colleges and universities, are subject to the Student Tuition Recovery Authority. This body protects students from financially unstable or fraudulent career schools by reimbursing students for tuition losses. Reimbursements are currently paid from the Student Tuition Recovery Fund, into which career schools make annual payments.

State Board of Career Colleges and Schools

(sec. 3332.03; Section 6)

Currently, the oversight of career schools is performed by a seven-member body called the State Board of Proprietary School Registration (hereafter referred to as the Board). The bill changes the name of this body to the State Board of Career Colleges and Schools. Besides this change in name, the bill also modifies the membership of the Board.

Current membership of the Board consists of the State Superintendent of Public Instruction or a designee, the Chancellor of the Board of Regents or a designee, and five members appointed to five-year terms by the Governor, with the advice and consent of the Senate. Of the members appointed by the Governor, current law specifies that two must have been in an executive or managerial position in a career school regulated by the Board for the five years immediately preceding appointment, two must be representatives of the general public, and one must be a graduate of a career school who represents students. The bill requires the Governor to appoint an additional member to the Board with a background in career school administration or management for the past five years, thereby

increasing the total number of Board members to eight.¹ While current law provides that all members of the Board have full voting powers, the student representative becomes a nonvoting member under the bill.

Board members appointed by the Governor are currently compensated solely for their necessary expenses incurred in attending meetings or performing other services. Under the bill, all members appointed by the Governor, including the student representative, also would receive a fixed rate of compensation for each day they are engaged in the discharge of official duties. They would be paid at a rate established by the Director of Administrative Services in accordance with the pay schedules for other exempt employees.² However, they could not receive step advancements.

Maintenance of surety bonds by career schools

(sec. 3332.08; Section 3)

Under current law, when a career school applies for a certificate of registration from the Board, the school must also supply a surety bond in the amount of \$10,000. The surety on the bond must be a corporate bonding company approved by the Department of Insurance. A career school must maintain its bond in effect for five years after its original registration with the Board and for five years after any change of ownership. In each case, the bond provides for the indemnification of any student who suffers loss due to fraud or misrepresentation used to procure the student's enrollment in the school, including repayment of tuition paid in advance.

The bill eliminates the five-year requirement regarding the length of time that a career school must maintain a surety bond and stipulates instead that the Board must establish by rule the period that a bond must remain in effect. In addition, the Board may allow a school to cancel its bond earlier if the school is approved to participate in a federal student financial assistance program authorized under Title IV of the Higher Education Act of 1965 or if the school meets other standards of financial responsibility established by the Board.³ Each corporate

¹ *Temporary law in the bill directs the Governor to make the additional appointment within 60 days after the effective date of the bill. The new member would serve until the following November 20th, at which time the member would be eligible for reappointment to a full five-year term.*

² *See R.C. 124.152 for the pay schedules for exempt employees (not in the bill).*

³ *Title IV of the Higher Education Act of 1965 includes such financial assistance programs as Pell Grants, Perkins Loans, the William D. Ford Direct Loan Program, and the Family Education Loan Program. See 20 U.S.C.A. 1070 et seq.*

bonding company acting as surety on a bond must continue to be approved by the Department of Insurance as currently required.

Beginning July 1, 2003, the bill would effect two additional changes relating to surety bonds (Section 3). First, the dollar amount of bonds maintained by career schools would be designated by the Board rather than mandated in statute. This change would grant the Board flexibility in setting the bond amount, presumably including the flexibility to establish different bond amounts for different categories of schools. Board rules establishing bond amounts must be adopted in accordance with the Administrative Procedure Act. Second, the bill specifies that the application for a certificate of registration would need to be accompanied by a surety bond *only if the school is located in Ohio*. Presumably, then, career schools that are located in another state but wish to be authorized to operate in Ohio would not be obligated to provide a bond in order to register with the Board.⁴

Reimbursement of students for tuition losses

(secs. 3332.081 and 3332.082; Section 3)

As noted above, the Student Tuition Recovery Authority protects students from tuition losses to career schools that fail to provide the students with the training they paid for. The Board plays a role in this protection through its day-to-day oversight responsibilities, but continuing law also authorizes the Board to pursue legal sanctions against schools or individuals that may be liable for the default. Both reimbursements for tuition losses and expenses incurred by the Board in pursuing legal remedies are paid from the Student Tuition Recovery Fund under current law.

Students are currently protected against tuition loss resulting from "business failure or any other reason for which the student is not legally responsible." This protection is limited under the bill solely to *prepaid* tuition loss for an academic term due to the closure of the career school in which the student is enrolled. Reimbursements from the Student Tuition Recovery Fund, therefore, may be paid only to students who lose their tuition investment because their schools closed down prior to fulfilling their contractual obligation to provide the courses or training the students paid for. Similarly, the Board is authorized to seek legal remedies only from schools that close. The bill further specifies that students

⁴ *This situation may occur, for example, if a career school is based in another state but would like to solicit students from Ohio to attend a school located just across the border or create a distance learning program for Ohio students.*

seeking reimbursement from the Fund for a prepaid tuition loss must submit a claim to the Board no later than one year after the school's closure.

Another change regarding reimbursements for tuition losses would become effective under the bill on July 1, 2003. Beginning on that date, all reimbursements to students deemed eligible by the Student Tuition Recovery Authority would be paid by the surety on the bond maintained by the career school rather than from the Student Tuition Recovery Fund. Legal expenses for the Board would also be paid from the surety bond. If, however, the bond proceeds are insufficient to cover all necessary payments, or the school is not required to maintain a bond, then additional reimbursements or expenses would be paid from the Fund. Any money recovered by the Board from the surety on a bond in excess of the total costs for tuition reimbursements and legal expenses would be deposited into the Fund.

Membership of Student Tuition Recovery Authority

(sec. 3332.081)

Current members of the Student Tuition Recovery Authority consist of the executive director of the Board, the executive director of the Ohio Association of Career Colleges and Schools, the Treasurer of State or a designee, and the chairpersons of the House of Representatives and Senate education committees. All members have voting privileges and must take an oath prior to assuming their duties. A chairperson and vice-chairperson must be elected from among the five members of the Authority. The bill changes the status of the legislative members of the Authority to nonvoting ex officio members (see **COMMENT**). Correspondingly, they are not required to take an oath and they are not eligible to serve as chairperson or vice-chairperson of the Authority under the bill.

Program authorizations for associate degree programs at career schools

(sec. 3332.05)

Under current law, prior to the issuance or renewal of a program authorization for an associate degree program, the State Board of Proprietary School Registration must furnish the Ohio Board of Regents with a copy of the career school's application for the program authorization and conduct a joint on-site visit of the school with a representative from the Board of Regents. The Board of Regents then has 21 days to provide the State Board of Proprietary School Registration with a written statement recommending approval or disapproval of the school's application.

The bill eliminates these requirements entirely. This change effectively removes the Board of Regents from any role in providing input to the State Board of Career Colleges and Schools as to whether to grant individual program authorizations for associate degree programs at career schools. Also, under the bill, the State Board of Career Colleges and Schools is no longer required to visit a school before making a decision about an application to offer an associate degree program.

Surety bonds for career school agents

(sec. 3332.10)

Agents for career schools inform prospective students about particular schools and solicit their enrollment. Current law requires agents to obtain a permit from the Board prior to contacting prospective students. Each applicant for a permit must supply a \$1,000 surety bond acceptable to the Board. This bond provides indemnification to students suffering loss as a result of fraud or misrepresentation on the part of the agent in securing the students' enrollment. The bill eliminates the requirement that agents for career schools maintain surety bonds.

Career Colleges and Schools Operating Fund

(Section 3)

Effective July 1, 2003, the bill creates the Career Colleges and Schools Operating Fund in the state treasury. All receipts of the Board would be deposited in the Fund and could be used solely for the administration and enforcement of the Board's oversight responsibilities. Investment earnings on the Fund would be credited to the Fund. Until July 1, 2003, receipts of the Board would continue to be deposited in the General Revenue Fund as currently required.

Other changes made by the bill

(secs. 3332.01, 3332.02, 3332.082, 3332.09, and 3332.091(A))

The bill makes the other following changes related to the Board's regulation of career schools:

---Continuing law exempts tuition-free courses conducted by employers exclusively for their own employees from regulation by the Board. The bill expands this exemption to include training courses for employees that are paid for by their employers and conducted by outside service providers. (Sec. 3332.02.)



---Under current law, the Board may limit, suspend, revoke, or refuse to issue or renew a certificate of registration or program authorization for a career school or impose a civil penalty on the school if the school gives monetary or other incentives to students in exchange for procuring the enrollment of new students. The bill specifies that a school faces sanctions only if it engages in this practice *without Board approval*. (Sec. 3332.09.)

---When the Board issues a formal complaint to a career school for an alleged violation, the Board must grant the person who holds the school's certificate of registration an *opportunity* to appear before the Board at a public hearing. Currently, the certificate holder is *required* to appear before the Board. (Sec. 3332.091.)

---It clarifies that tuition losses for which students may be reimbursed do not include moneys not yet received by the students or otherwise credited to their accounts, but held by career schools in escrow accounts for tuition or fees for future terms as uncommitted grants, loans, or Pell grant money. (Sec. 3332.082.)

---It clarifies that as used in Chapter 3332. of the Revised Code, "program" means "a course of study, whether offered in a specific place, by correspondence using the mails, or by any other means of communication, designed to prepare students for potential employment in a recognized vocation, occupation, or profession at the certificate, diploma, or degree level" (sec. 3332.01).

Student Workforce Development Grant Program

(sec. 3333.29)

The Student Workforce Development Grant Program provides grants to Ohio students who satisfy certain academic criteria and are enrolled full-time in two- or four-year degree programs at either private career schools registered by the State Board of Proprietary School Registration or certain private institutions exempt from regulation by the Board.⁵ Administered by the Board of Regents, the program provides grants paid directly to the school where the student is enrolled. The Board of Regents must determine the amount of the grants based on the amount of funds available. A student may receive assistance under the program for no more than five academic years. Assistance under the program may be combined with assistance under other state programs, but the combined assistance

⁵ *Private institutions exempt from regulation by the State Board of Proprietary School Registration are those that are regionally accredited, operated by for-profit corporations, and offer bachelor's or master's degrees approved by the Ohio Board of Regents (R.C. 3333.046, not in the bill).*

from the state cannot exceed the total of the student's instructional and general fees.

Current law restricts the award of grants to students who enrolled in eligible institutions after July 1, 2000. The bill removes this limitation and allows the award of such a grant to any eligible student regardless of first enrollment date.

COMMENT

Article II, § 4 of the Ohio Constitution prohibits a member of the General Assembly from holding any "public office" of the United States, Ohio, or a political subdivision while serving as a state legislator. Although no court has ruled on the legality of legislators serving as members of the Student Tuition Recovery Authority, the Ohio Supreme Court has issued several opinions describing the characteristics of a "public office."⁶ According to this judicial doctrine, a "public office" is a position created by law, with independent and continuing duties prescribed by statute and involving the exercise of some portion of the sovereign power. The court has further clarified that sovereign powers include police powers, the disposition of public property, the incurring of financial obligations upon the state, and political or business dealings in which the public acts through a state agency.⁷ It is possible that the statutory responsibilities of the Student Tuition Recovery Authority could be construed to be those of a public office, in which case it would be a constitutional violation for members of the General Assembly to also serve as members of the Authority. Presumably, the bill alleviates this concern by making the legislative members of the Authority nonvoting members.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-14-02	pp. 1766-1767
Reported, S. Education	---	---

⁶ See *State ex rel. Landis v. Bd. of County Commrs. (1917)*, 95 *Ohio St.* 157; *State ex rel. Herbert v. Ferguson (1944)*, 142 *Ohio St.* 496; and *State ex rel. Meshel v. Keip (1981)*, 66 *Ohio St.* 2d 379.

⁷ *Meshel v. Keip*, 387-388.